

As clearly described in that patent and illustrated in the drawings, the device therein disclosed is a ventilator for “causing the patient to breathe artificially” (e.g. Abstract lines 3–4). The device is provided with a tracheal tube coupled to a plastic bag 30 within a breathing bellows 20. The latter bellows is driven by a driving bellows 22 driven by squeezing and releasing a resilient bag 24. The excursions of the breathing bellows 20 are indicated by a septum 28 which is attached to the right end of breathing bellows 20 and left end of driving bellows 22 (Column 3, lines 52–63).

Such a device is to be sharply distinguished from the device of the present invention, as defined in Claim 1 for example, “for detecting the flow of gas through at least one opening in an object”. As described in the specification, for example the first paragraph, the device is particularly useful for detecting breathing of a subject.

Claim 1, which is the broadest and only independent claim in the application, clearly distinguishes from the device of Elam et al, not only in the purpose of the device as discussed above, but also in the different structure as recited in Claim 1. Thus, Claim 1 recites the following combination of structural features:

(a) An inlet for pressurewise association with the opening through which the flow of gas is to be detected, e.g. the mouth of a subject whose breathing is to be detected. It is assumed that this feature corresponds to one end of tracheal tube 52 in Elam et al, since this tube is described as being “a tracheal tube 52 which conducts gases to and from the trachea of the patient” (Column 2, lines 47–49). The copy of the drawing from this patent accompanying the Official Action indicated this tube was directed “to ambient” which is clearly not the case.

(b) A chamber (3) having an interior in pressurewise association with the inlet. The only chamber in pressurewise association with tracheal tube 52 is plastic bag 30 enclosed within the breathing bellows 20.

(c) An outlet (5) located downstream of the chamber (3) and open to ambient pressure. This recitation is clearly not met by Elam et al since plastic bag 30, defining the “chamber” is not “open to ambient pressure”, but rather is inflated or deflated by driving bellows 22 in order to cause the patient to breathe artificially in accordance with the main purpose of the device of that patent.

(d) A pressure displaceable member (4) having an interface exposed to and contiguous with the interior of said chamber and an outer face exposed to the ambient

pressure. It is assumed that septum 28 in Elam et al was considered as being the pressure displaceable member. But septum 28 is not "exposed" to the interior of chamber 30, nor does it have an outer face exposed to the ambient pressure. Clearly, therefore, this recitation of Claim 1 is not met by Elam et al.

(e) Finally, Claim 1 recites the further feature (in sub-paragraph d) that the pressure displaceable member is pivotally displaceable about the end of the chamber "as a result of a differential in respective pressures of said chamber interior and said ambient pressure". This feature, as recited in Claim 1 is clearly not met by the reference since the displacement of septum 28 is effected by the driving bellows 22 and not by the differential pressure of the chamber interior and the ambient pressure.

Clearly, therefore, neither the structure as defined in Claim 1, nor the functional features of such structure as also defined in Claim 1, is present in the device of Elam et al, and therefore that device could hardly constitute an anticipation of Claim 1 under 35 U.S.C. 102(b).

The remaining claims 2, 3 and 5 all depend from Claim 1, and therefore are allowable with Claim 1 under 35 U.S.C. 102(b) for the same reasons as discussed above, apart from the further features set forth in the respective dependent claims.

In view of the foregoing, it is believed that all the claims are allowable over the cited reference. An early Notice of Allowance is therefore respectfully requested.

Respectfully submitted,



Martin Moynihan
Registration No. 40,338

October 19, 2005

Enclosed:

Petition for Extension of Time